

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KYLE RE,

Plaintiff,

No. C 13-03518 WHA

v.

UNITED STATES OF AMERICA,

Defendant.

**ORDER DENYING
MOTION TO CORRECT
AND VACATING HEARING**

INTRODUCTION

In this putative class action, plaintiff moves pursuant to Federal Rule of Civil Procedure 60(a) to correct a prior order. For the reasons stated below, the motion is **DENIED**. The hearing on February 6, 2014, is **VACATED**.

STATEMENT

The background of this action is set forth in a prior order (D.t. No. 37). In short, this action is the third in a series of related class actions, all brought by Attorney S. Chandler Visser of San Francisco, and all challenging the Army and Air Force Exchange Service's collection of military veterans' debts. The present complaint seeks pre-judgment interest on federal income tax overpayments reportedly withheld to offset veterans' debts to the United States. In plaintiff Kyle Re's case, both sides agree that such interest would be calculated on an amount of \$6.65, which the government has already refunded to him.

1 On December 12, 2013, an order granted the government's motion to dismiss the
2 complaint for lack of subject-matter jurisdiction. Plaintiff now moves to correct that order under
3 Federal Rule of Civil Procedure 60(a), proposing two sets of changes.

4 ANALYSIS

5 Under Rule 60(a), "[t]he court may correct a clerical mistake or a mistake arising from
6 oversight or omission whenever one is found in a judgment, order, or other part of the record."
7 Although the rule allows for correction of clerical errors and oversights, it does not permit
8 correction of substantive mistakes. Indeed, *Blanton v. Anzalone*, 813 F.2d 1574, 1577 n.2 (9th
9 Cir. 1987), states:

10 The basic distinction between "clerical mistakes" and mistakes
11 that cannot be corrected pursuant to Rule 60(a) is that the
12 former consist of "blunders in execution" whereas the latter
13 consist of instances where the court changes its mind, either
14 because it made a legal or factual mistake in making its
15 original determination, or because on second thought it has
16 decided to exercise its discretion in a manner different from the
17 way it was exercised in the original determination.

18 Our court of appeals has since reiterated this in *Dible v. City of Chandler*, 361 F. App'x
19 790, 791 (9th Cir. 2010), citing to *Blanton* and noting that only "clerical mistakes" are
20 correctable under Rule 60(a).

21 Here, plaintiff moves to correct the December 12 order in two ways. *First*, he requests
22 that the order be edited to recognize the "United States rule," such that the government's refund
23 is applied to the alleged pre-judgment interest *before* it is applied to withheld tax overpayment.
24 *Opperman v. Allied Mut. Ins. Co.*, 652 N.W.2d 139, 143 (Iowa 2002). *Second*, plaintiff asks to
25 change an "apparent misstatement of fact" so that the order acknowledges the jurisdictional and
26 procedural distinctions between suits for refund of tax and civil actions in general (Br. 5). To
27 this end, he argues (Reply 9):

28 [The December 12 order] needs to clarify that it recognizes that
the procedural requirements for a suit for refund of tax differ
from those applicable to a suit for recovery of an overpayment
non-tax debt offset, or a suit solely for pre-judgment interest on
the overpayment, are different.

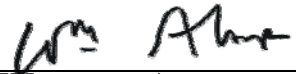
1 The above changes, however, are based on alleged substantive legal or factual mistakes
2 with the December 12 order, despite what plaintiff otherwise contends (Reply 8). As such, the
3 changes fall beyond the scope of clerical mistakes and oversights permitted under Rule 60(a).
4 *See Blanton*, 813 F.2d at 1577. Given that plaintiff explicitly moves to correct the December 12
5 order under Rule 60(a) — and no other basis — his motion must be **DENIED**. Please do not raise
6 on appeal any new items raised on this motion as grounds for reversal.

7 **CONCLUSION**

8 For the reasons stated above, plaintiff's motion under Rule 60(a) is **DENIED**. The hearing
9 on February 6, 2014, is accordingly **VACATED**.

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11 **IT IS SO ORDERED.**

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13 Dated: January 27, 2014.

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16 WILLIAM ALSUP
17 UNITED STATES DISTRICT JUDGE
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